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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11 NICHOLAS DAVID FAVRO,

12                  Plaintiff,

13                  v.

14                  WHATCOM COUNTY JAIL,

15                  Defendant.

CASE NO. 2:21-CV-339-RSL-DWC

ORDER TO FILE AMENDED  
COMPLAINT

16                  The District Court referred this action to United States Magistrate Judge David W.  
17 Christel. Plaintiff Nicholas David Favro, proceeding *pro se*, filed this civil rights complaint  
18 under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint under 28 U.S.C.  
19 §1915A, the Court finds Plaintiff has failed to state a claim, but provides Plaintiff leave to file an  
amended pleading by June 4, 2021, to cure the deficiencies identified herein.

20                  **I.         Background**

21                  In the Complaint, Plaintiff, a pretrial detainee, alleges Defendant Whatcom County Jail  
22 ("the Jail") violated Plaintiff's constitutional rights by failing to meet safety requirements in a  
23 medical/disability housing unit within the Jail. Dkt. 5.

1           **II.      Discussion**

2       Under the Prison Litigation Reform Act of 1995, the Court is required to screen  
 3 complaints brought by prisoners seeking relief against a governmental entity or officer or  
 4 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the  
 5 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to  
 6 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant  
 7 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,  
 8 152 F.3d 1193 (9th Cir. 1998).

9       Plaintiff’s Complaint suffers from deficiencies that require dismissal if not corrected in  
 10 an amended complaint.

11       A. Improper Defendant

12       Plaintiff named the Jail as the sole defendant in this lawsuit. The Jail is not a legal entity  
 13 capable of being sued under § 1983. Rather, Whatcom County, a municipality, would be the  
 14 proper defendant. *See Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, 98  
 15 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Wright v. Clark County Sheriff’s Office*, 2016 WL 1643988,  
 16 \*2 (W.D. Wash. April 26, 2016). To set forth a claim against a municipality, a plaintiff must  
 17 show the defendant’s employees or agents acted through an official custom, pattern, or policy  
 18 permitting deliberate indifference to, or violating, the plaintiff’s civil rights, or that the entity  
 19 ratified the unlawful conduct. *Id.* at 690-91. A plaintiff must show (1) deprivation of a  
 20 constitutional right; (2) the municipality has a policy; (3) the policy amounts to deliberate  
 21 indifference to a plaintiff’s constitutional rights; and (4) the policy is the moving force behind  
 22 the constitutional violation. *See Oviatt v. Pearce*, 954 F.3d 1470, 1474 (9th Cir. 1992).

1 Plaintiff has not named Whatcom County as a defendant and has also not alleged facts to  
 2 show Whatcom County is liable. *See* Dkt. 4. If Plaintiff seeks to sue Whatcom County, he must  
 3 name Whatcom County as a defendant and allege facts sufficient to meet the required elements  
 4 of a claim against a municipality and show Whatcom County violated his constitutional rights.

5       B. Failure to State a Claim

6       Further, Plaintiff has failed to state a claim upon which relief can be granted. To state a  
 7 claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he suffered a violation of  
 8 rights protected by the Constitution or created by federal statute, and (2) the violation was  
 9 proximately caused by a person acting under color of state law. *See Crumpton v. Gates*, 947 F.2d  
 10 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to identify the specific  
 11 constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

12       To satisfy the second prong, a plaintiff must allege facts showing how individually  
 13 named defendants caused, or personally participated in causing, the harm alleged in the  
 14 complaint. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold v. IBM*, 637 F.2d 1350,  
 15 1355 (9th Cir. 1981). A person subjects another to a deprivation of a constitutional right when  
 16 committing an affirmative act, participating in another's affirmative act, or omitting to perform an  
 17 act which is legally required. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Sweeping  
 18 conclusory allegations against an official are insufficient to state a claim for relief. *Leer*, 844 F.2d  
 19 at 633. Further, a § 1983 suit cannot be based on vicarious liability alone, but must allege the  
 20 defendant's own conduct violated the plaintiff's civil rights. *City of Canton v. Harris*, 489 U.S.  
 21 378, 385-90 (1989).

22       In the Complaint, Plaintiff states he slipped in the shower at the Jail and injured his neck.  
 23 Dkt. 5, pp. 4-5. He states both the jail staff and medical staff refused to provide him with a  
 24 wheelchair to take him to the medical unit. *Id.* at p. 5.

1 Plaintiff fails to state the alleged wrong-doing of any named individual who was acting  
 2 under color of state law. Moreover, Plaintiff's statements are too conclusory to sufficiently show  
 3 deliberate indifference. As Plaintiff has not shown he suffered a violation of his constitutional  
 4 rights that was caused by a person acting under color of state law, he has failed to state a claim  
 5 upon which relief can be granted. *See Jones v. Community Development Agency*, 733 F.2d 646,  
 6 649 (9th Cir. 1984) (vague and mere conclusory allegations unsupported by facts are not  
 7 sufficient to state section 1983 claims).

### 8       **III. Instruction to Plaintiff and the Clerk**

9           Due to the deficiencies described above, if Plaintiff intends to pursue a § 1983 civil rights  
 10 action in this Court, he must file an amended complaint and within the amended complaint, he  
 11 must write a short, plain statement telling the Court: (1) the constitutional right Plaintiff believes  
 12 was violated; (2) the name of the person who violated the right; (3) exactly what the individual  
 13 did or failed to do; (4) how the action or inaction of the individual is connected to the violation  
 14 of Plaintiff's constitutional rights; and (5) what specific injury Plaintiff suffered because of the  
 15 individual's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976).

16           Plaintiff shall present the amended complaint on the form provided by the Court. The  
 17 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original  
 18 and not a copy, it should contain the same case number, and it may not incorporate any part of  
 19 the original complaint by reference. The amended complaint will act as a complete substitute for  
 20 the original Complaint, and not as a supplement. An amended complaint supersedes the original  
 21 complaint. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) *overruled in part on*  
 22 *other grounds*, *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012). Therefore, the amended  
 23 complaint must be complete in itself and all facts and causes of action alleged in the original  
 24 Complaint that are not alleged in the amended complaint are waived. *Forsyth*, 114 F.3d at 1474.

1 The Court will screen the amended complaint to determine whether it contains factual allegations  
2 linking each Defendant to the alleged violations of Plaintiff's rights. The Court will not authorize  
3 service of the amended complaint on any Defendant who is not specifically linked to a violation  
4 of Plaintiff's rights.

5 If Plaintiff fails to file an amended complaint or fails to adequately respond to the issues  
6 raised herein on or before June 4, 2021, the undersigned will recommend dismissal of this action.

7 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983  
8 civil rights complaint and for service. The Clerk is further directed to send copies of this Order to  
9 Plaintiff.

10 Dated this 26th day of April, 2021.

11   
12 David W. Christel  
13 United States Magistrate Judge

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